

**REASONABLE
ACCOMMODATIONS AND
MODIFICATIONS**

Or, "Avoiding Discrimination by Treating People
Differently"

WHO IS DISABLED?

**FEDERAL DEFINITION OF
DISABILITY**

- "A physical or mental impairment which substantially limits one or more major life activities"; or
- A record of such an impairment; or
- Being regarded as having such an impairment

EXAMPLES OF DISABILITIES UNDER FEDERAL LAW

- Physical or Mental impairments include, but are not limited to:
 - Visual, speech, mobility or hearing impairments
 - AIDS
 - Mental/Emotional illness
 - Drug addiction (other than addiction caused by current, illegal use of controlled substances)
 - Alcoholism

WASHINGTON STATE DEFINITION OF DISABILITY

- Washington State Law definition of disability much more broad:
 - Permanent and temporary;
 - Mitigated and unmitigated; and
 - Common or uncommon.

Medical professional responsible for diagnosis of disabilities

EXAMPLES OF DISABILITIES UNDER WASHINGTON LAW

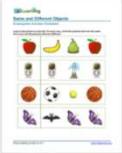
- Some disabilities that would qualify under WA law but not federal law:
 - Diabetes
 - Influenza
 - Broken leg

“EQUALITY” / “EQUITY”

Let's Buy Everybody a 10-speed bike

WHY IT'S DIFFERENT

- Most of the time, Fair Housing requires you to treat everyone **the same way**
- Reasonable accommodations and modifications require you to treat people **differently**
- Only available based on disability, not on other protected classes



FHA INTERPRETED BROADLY

- The broadest of the federal civil rights statutes



DOJ-HUD JOINT STATEMENT

- Reasonable Accommodations Under the Fair Housing Act, May 17, 2004
 - <https://www.justice.gov/crt/us-department-housing-and-urban-development>
 - Includes examples
 - A federal agency's interpretation of its own regulations is given great weight

DOJ-HUD JOINT STATEMENT

- What is a reasonable accommodation? Example 3
 - A housing provider has a "no pets" policy. A tenant who is deaf requests that the provider allow him to keep a dog in his unit as a reasonable accommodation. The tenant explains that the dog is an assistance animal that will alert him to several sounds, including knocks at the door, sounding of the smoke detector, the telephone ringing, and cars coming into the driveway. The housing provider must make an exception to its "no pets" policy to accommodate this tenant.

ACCOMMODATIONS VS. MODIFICATIONS

ACCOMMODATIONS

- Changes in rules, policies, practices, or services, that are necessary because of someone's disability
- Housing provider bears any costs involved

MODIFICATIONS

- Changes to the premises
- Resident bears costs (unless the cost is really cheap or it's federally subsidized)
- Landlords can require tenant to remove interior modifications upon leaving

REQUESTING AN ACCOMMODATION OR MODIFICATION

- Doesn't have to be in writing, but it's recommended
- No specific HUD form
- Request should state:
 - That the person has a disability (doesn't need to say which one)
 - That the person needs the accommodation or modification because of their disability
 - That the accommodation or modification is necessary to give them equal use of their housing



IFHC's sample RA request form

HOW DO I KNOW IF THEY REALLY HAVE A DISABILITY?

- Sometimes it's obvious. If it's obvious, you **can't** ask for proof.



AND IF IT ISN'T OBVIOUS?

- You can ask for a letter from a reliable third party who's in a position to verify the disability
 - Usually a doctor, but can also be a social worker, a counselor, or a family member
- Letter verifies:
 - Existence of the disability
 - Reason for the accommodation or modification
 - The person needs the accommodation or modification to have equal use of their housing



IFHC's sample Proof of Need

PLEASE DON'T

- **Don't** ask about the diagnosis, or any other questions about the nature or severity of the disability
- **Don't** directly contact the person who fills out the Proof of Need form
- **Don't** ask for a HIPAA release
- **Don't** dilly-dally; delays can be treated as denials
- **Don't** charge a fee for an accommodation



WHEN SHOULD A REQUEST BE GRANTED?

- The person is disabled
- There is a nexus between the disability and the accommodation
- It is reasonable.

WHEN CAN YOU TURN DOWN A REQUEST?

ACCOMMODATIONS

- The person doesn't have a disability
- The accommodation they're asking for isn't related to their disability
- They're asking you to act as a service provider (undue administrative burden)
- It's unreasonable, considering
 - Cost of accommodation (undue financial burden)
 - Housing provider's resources

MODIFICATIONS

- The person doesn't have a disability
- The modification they're asking for isn't related to their disability
- OK to require the person to get permits and do a competent job of modifying the premises

DON'T JUST SAY NO!

Housing providers are required to have an **interactive process**: if you can't give them what they initially ask for, ask if there are other accommodations or modifications that might work



COMMONLY REQUESTED ACCOMMODATIONS

- Additional time to move out for people with mobility impairments
- Waive a "no cosigners" rule for someone whose only source of income is disability
- Assigned parking spaces for people with parking cards
- Overlook a previous eviction or arrest if they happened during a period of untreated mental illness
- Allow a group home for people with disabilities to operate in a neighborhood that tries to prohibit them
- And, of course, animals.

WASHINGTON: IS THIS REQUEST REASONABLE?

- Some temporary disabilities may require accommodation:
 - Broken leg may require alternative method of paying rent v. deliver to rental office in person;
 - Influenza or chicken pox may interfere with a tenant moving their car in the parking lot every 72 hours; or
 - Short-term hospitalization for a temporary illness or surgery may preclude a tenant from dealing with damage to a vandalized vehicle, or a tire gone flat in their absence, that might otherwise trigger towing.

WASHINGTON: IS THIS REQUEST REASONABLE?

- Not all requests are reasonable for temporary disabilities:
 - A request for management to install a ramp because someone is temporarily in a wheelchair is likely unreasonable;
 - A request for someone to skip a month's rent payment because they have been hospitalized is likely unreasonable; and
 - A request to allow a person known to have been convicted of a serious crime involving harm to persons or property, to stay with the tenant as a temporary caregiver during surgery recovery may not be reasonable.

SERVICE ANIMAL? SUPPORT ANIMAL? COMFORT ANIMAL?

- There is no distinction between any of these different types of animals when an individual requests that he or she be permitted to have one as a reasonable accommodation in housing.
- Courts have repeatedly held that emotional support animals are service animals and must be considered as reasonable accommodations for disabled individuals

EMOTIONAL SUPPORT ANIMALS ARE NOT PETS



EMOTIONAL SUPPORT ANIMALS
DON'T HAVE TO BE DOGS



REASONABLE ACCOMMODATION
CASES

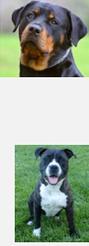
- *Fair Hous. Of the Dakotas v. Goldmark Property Management, Inc.*, 778 F.Supp.2d 1028, 1036 (D.N.D. 2011)
- There is no per se training requirement for service animals and the FHA protects the right to have all types of service animals
- *Assoc. of Apartment Owners of Liliuokalani Gardens at Waikiki v. Taylor*, 892 F.Supp.2d 1268 (D. Haw. 2012)
- Courts have held that some individuals requesting to have a service animal as a reasonable accommodation in housing may have a disability that requires a service animal to have some type of training and that in other cases no training is necessary
- Inquiry focuses on individual requesting the reasonable accommodation and the accommodation necessary to ameliorate the effects of the disability

REASONABLE
ACCOMMODATION CASES

- *Overlook Mutual Homes, Inc. v. Spencer*, 666 F.Supp.2d 850, 861 (S.D. Ohio 2009)
- Service animals which are for emotional support to ameliorate the effects of a mental or emotional disability need not be individually trained
- *Intermountain Fair Housing Council v. CVE Falls Park, L.L.C.*, 2:10-cv-00346-BLW (D. Idaho 2011)
- A housing provider that imposes a deposit on a service animal is in violation of the FHA
- 24 C.F.R. 100.65(b)(1) – a housing provider may not require different rent or impose a security deposit or other lease terms because of an individual's disability

MAY A PROVIDER IMPOSE RESTRICTIONS?

- A housing provider may not impose blanket breed, size or weight restrictions on service animals (even when there is a municipal ordinance banning a breed)
- A housing provider must approve a service animal as a reasonable accommodation if keeping the particular animal is "feasible" and "practical"
- A reasonable accommodation request can be denied if the specific animal poses a direct threat to the health or safety of others that cannot be reduced or eliminated by another reasonable accommodation or if the specific animal would cause substantial physical damage to the property or others that cannot be reduced or eliminated by another reasonable accommodation



MAY A PROVIDER RESTRICT WHERE AN ESA MAY BE PRESENT

- An individual with a disability who has a service animal can take the animal in all areas of the premises where persons are normally allowed to go, unless doing so would impose an undue financial and administrative burden or would fundamentally alter the nature of the housing provider's services
- Cannot prohibit individual with disability from taking service animal into the common areas of the property



EDUCATION

- Education and training truly are the best way for housing providers, consumers and advocates to understand reasonable accommodations.
- Fair housing education and training may prevent costly fair housing violations.
- The cost of discrimination in fair housing cases is high and may lead to loss of much needed community planning and development funds and or huge damage awards.

